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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

CV 02-2380 #1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JAMES R. CONROY,

Plaintiff,

vs.

THE CITY OF SEATTLE, a
municipal corporation and the
members of its Police Force,
OFFICERS SCOTT MOSS, JOHN
HAYES, GRINSTEAD, SMITH,
MACCARRENE, JOHNSON, PALDON,
STOCKWELL, and MARK WORSTMAN;
and JOHN DOES I THROUGH V,

Defendants.

No.

C02-2380P

CLAIM FOR PERSONAL INJURIES
AND DAMAGES FOR DEPRIVATION OF
RIGHTS, PRIVILEGES AND
IMMUNITIES AND PENDENT CLAIMS
(SUPPLEMENTAL JURISDICTION)

JURY DEMAND

I. JURISDICTION

1.1 Jurisdiction of this claim lies in this court based upon
42 USC §1983 reading as follows:

Civil Action for Deprivation of Rights. Every person
who, under color of any statute, ordinance, regulation,
custom, or usage, of any State or Territory or the
District of Columbia, subjects, or causes to be
subjected, any citizen of the United States or other
person within the jurisdiction thereof to the deprivation
of any rights, privileges, or immunities secured by the
Constitution and laws, shall be liable to the party
injured in an action at law, suit in equity, or other

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[ORIGINAL]

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proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

1.2 This court has original jurisdiction of this action pursuant to 28 USC §1343(a)(3) reading as follows:

Civil Rights and elective franchise. (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: ... (3) to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;...

1.3 This court also has supplemental jurisdiction of the plaintiff's claims (other than the constitutional claims) pursuant to 28 USC §1367 reading as follows:

(a) Except as provided in subsection (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

II. VENUE

Venue is proper in this judicial district pursuant to 28 USC §1391(b)(1) because the defendant City of Seattle, a municipal corporation, is located in this judicial district and the

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1 individual defendants all reside in this District. Venue is also
2 appropriate in this District under 28 USC §1391 (b)(2) because a
3 substantial part of the events giving rise to this claim occurred
4 within this District.

5 6 III. PARTIES

7 3.1 James R. Conroy, plaintiff is a single person, age 42 and
8 is a citizen of the United States. He is now and always has been
9 a resident of Seattle, King County, Washington.

10 3.2 City of Seattle is a municipal corporation.

11 3.3 The individual defendants named in this complaint are
12 officers of the Police Department of the City of Seattle and all
13 are residents in this district. The true names of defendants John
14 Doe I through V are not known to the plaintiff at the present
15 time, but these five defendants are each members of the City of
16 Seattle Police Department "Hostage Negotiation Team," the
17 activities of which are described further in this complaint.

18 3.4 Claimant has a mental and emotional handicap and has been
19 treated intermittently by psychiatrists and clinical psychologists.
20 These health care practitioners have prescribed various medications
21 to assist and, when taking his medications on a regular basis,
22 claimant lives and behaves normally as a citizen. When not taking
23 his medication, he will at times behave inappropriately, but at no
24 time during his adult life has he ever behaved violently nor
25 inflicted any physical abuse upon any person. From time to time

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1 his actions may be described as inappropriate, but he is, and has
2 always been, a gentle and a careful person.

3 IV. FACTS

4 4.1 On August 9, 2001 claimant was at his home which he owns
5 at his residence address, 2114 - 34th Avenue West, Seattle,
6 Washington 98199. He was alone in the home and had locked himself
7 in. He had written on the front window of the home, "Help me." A
8 report was made by persons unknown to the Seattle Police Department
9 who responded by sending approximately 12 police vehicles and two
10 armored vehicles to the scene. A crowd gathered. Two of claimants
11 siblings were there who knew personally from claimant's history
12 that he was merely behaving inappropriately and that apparently had
13 not regularly taken his medication. A number of the neighbors of
14 claimant, who knew him to be a gentle and kind person, and who also
15 knew of his mental difficulties, were also on the scene. One of
16 claimant's mental health professionals came to the scene and the
17 following occurred:

18 (a) Claimant's brothers both spoke to the police officer
19 in charge telling him that claimant was not violent and that it
20 would merely be necessary that one or both of them talked to him
21 and whatever difficulty the police perceived would be peacefully
22 resolved. The officer responded, "get out of here--this is a
23 police matter," and told both brothers to leave the area.

24 (b) The mental health professional who had previously
25 worked with claimant, made the same request to the police, knowing
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1 that claimant was not a violent person and asking merely to speak
2 with the claimant to resolve any problems. The police told the
3 mental professional "get out of here," again asserting that it was
4 a "police matter."

5 (c) Several of the officers then went to claimant's
6 front porch, demanded that the front door be opened. When claimant
7 opened the door and stepped out onto the porch, one of the police
8 officers fired a rubber baton gun at point blank range, directly
9 into claimant's face, destroying one of his eyes and firing an
10 electrically charged Taser gun into claimant to render him
11 immobile. Claimant has permanently lost all vision in his eye and
12 for his lifetime will have a prosthetic eye.

13 4.2 Claimant was not violent and at no time in his life had
14 ever been violent. Whatever crime the police suspected the
15 claimant to have committed was not of the severity that justified
16 the unlawful and unconstitutional force used. Claimant did not
17 pose any immediate threat to the police nor to any citizen and was
18 neither resisting or fleeing; the amount of force used by the
19 police in shooting claimant directly in the face at point blank
20 range was not a good faith effort to maintain discipline, but was
21 rather a malicious and sadistic act on the part of the police to
22 harm the plaintiff and was done recklessly and with callous
23 indifference, all in violation of claimant's constitutional rights
24 under the Fourth and Fourteenth Amendments of the Constitution of
25 the United States and in violation of 42 USC §1983, and the arrest

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1 of claimant in this manner constituted an assault and battery and
2 a false arrest.

3 4.3 The Fourth Amendment to the United States Constitution
4 reads as follows:

5 The right of the people to be secure in their persons,
6 houses, papers, and effects, against unreasonable
7 searches and seizures, shall not be violated, and no
8 Warrants shall issue, but upon probable cause, supported
9 by oath or affirmation, and particularly describing the
10 place to be searched, and the persons or things to be
11 seized.

12 4.4 The Fourteenth Amendment to the United States
13 Constitution reads as follows:

14 ...no state shall make or enforce any law which shall
15 abridge the privileges or immunities of citizens of the
16 United States, nor shall any state deprive any person of
17 life, liberty or property, without due process of law; or
18 deny to any person within its jurisdiction the equal
19 protection of the law.

20 4.5 The Fourth Amendment guarantees to every person the right
21 to be free from the use of excessive force by the police and the
22 forces of government. The force used upon plaintiff was
23 intentional or at least with reckless and callous disregard for
24 claimant's constitutional rights, was brutal, unjustified, abusive
25 and offensive to human dignity and out of all proportion to any
26 conceived threat that the officers violating his rights may have
27 perceived. The injury to plaintiff James R. Conroy was an
28 objectively severe physical injury, satisfying the injury element
of the civil rights claim under 42 USC §1983.

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1 4.6 The Fourteenth Amendment requires probable cause that a
2 criminal offense has been committed prior to an arrest and
3 deprivation of the liberty of the arrested person. There was no
4 probable cause for the arrest and physical abuse committed upon
5 claimant and he was falsely arrested, and intentionally and
6 unjustifiably confined, and his liberty taken from him without due
7 process of law and it constituted a denial of equal protection of
8 the law. The actions of the police constituted an intentional
9 infliction of bodily harm to which plaintiff did not consent.

10 4.7 The conduct of the police officers above described was in
11 violation of the Fourth and Fourteenth Amendments of the United
12 States Constitution and in violation of 42 USC §1983.

13 4.8 The City of Seattle is a municipal corporation within the
14 State of Washington which maintains as its agents and servants of
15 the City of Seattle, the members of the Seattle Police Department.
16 The City of Seattle acted with reckless and callous disregard for
17 the constitutional rights of citizens including the claimant,
18 neither properly supervising nor instructing the police personnel
19 to exercise appropriate restraint and to prohibit absolutely the
20 use of excessive and unreasonable force in effecting an arrest.
21 Further, the policy followed by the Seattle Police Department in
22 reckless disregard of the constitutional rights of the citizens and
23 the claimant followed a policy of permitting and not restraining
24 the police officers from firing guns directly into the face of a
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1 citizen who is not posing any threat to the police officers nor to
2 any citizen.

3 4.9 Claimant was hospitalized and, during the period from the
4 date of the incident through September 7, 2001, incurred hospital
5 expense of \$34,517.41 and medical and surgical expenses of
6 \$8,613.41. In addition, the expenses for the prosthetic eye and
7 medical treatment associated therewith exceed \$3,500.

8 **COUNT ONE**

9 **DEPRIVATION OF RIGHTS/COMPENSATORY DAMAGES**

10 Plaintiff has permanently lost the sight in his eye and for
11 the rest of his life will be required to wear a prosthetic eye. He
12 has suffered personal indignity, embarrassment, humiliation,
13 emotional and mental distress, mental anguish, pain and suffering,
14 medical expense for loss of and treatment for his eye injury and
15 replacement with a prosthetic eye and anticipates expense over his
16 lifetime for counseling, psychiatric and psychological assistance
17 superimposed upon a difficult mental health situation which
18 plaintiff was burdened with prior to the incident. Plaintiff has
19 sustained loss of income and loss of earning capacity, all to
20 plaintiff's compensatory damage in the sum of \$1 million for
21 violation of 42 USC §1983 and deprivation of his constitutional
22 rights.

23 **COUNT TWO**
24 **PUNITIVE DAMAGES**

25 The conduct of the defendants described in Paragraph IV above
26 was malicious and constituted an intentional and/or reckless

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disregard of plaintiff's civil and constitutional rights. The police operated in a manner that evidenced callous indifference to the rights of plaintiff and the officers acted in bad faith and defendants should be punished and deterred from the type of conduct visited upon the plaintiff and an additional award of punitive damages in the sum of \$1 million is appropriate and demanded by plaintiff.

**COUNT THREE
ATTORNEY'S FEES**

42 USC §1988 provides that in any action or proceeding to enforce a violation of 42 USC §1983 the court, in its discretion, may allow the prevailing party a reasonable attorney's fee and plaintiff requests that at the conclusion of trial, the court, in addition to compensatory and punitive damages award plaintiff a reasonable attorney's fee for the prosecution of this action.

**COUNT FOUR
ASSAULT AND BATTERY**

The conduct of the defendants described in Paragraph IV above constituted an intentional infliction of harmful body contact to which the plaintiff did not consent, causing damage to the plaintiff in the sum of \$1 million as described in Count One for compensatory damage.

**COUNT FIVE
FALSE ARREST, FALSE IMPRISONMENT**

The conduct of the defendants described in Paragraph IV above amounted to an intentional confinement of the plaintiff which was

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1 unjustified, amounting to false arrest/false imprisonment to the
2 damage of the plaintiff in the sum of \$1 million as described in
3 Count One for compensatory damages.

4
5 **COUNT SIX**
TORT OF OUTRAGE

6 The conduct of the defendants described in Paragraph IV above
7 was outrageous in character, extreme in degree and beyond all
8 possible bounds of decency. The conduct of the defendants was
9 atrocious and utterly intolerable in a civilized community to the
10 damage of the plaintiff in the sum of \$1 million as alleged in
11 Count One for compensatory damages.

12 Plaintiff demands trial by jury.

13 WHEREFORE, plaintiff prays for judgment against the defendants
14 and each of them as follows:

- 15 1. For \$1 million compensatory damages on Counts One, Four,
16 Five and Six;
17 2. For \$1 million punitive damages on Count Two;
18 3. That the court award a reasonable attorney's fee as
19 requested in Count Three;
20 4. For plaintiff's costs and disbursements herein to be
21 taxed and such other and further relief as to the court may seem
22 just and equitable in the premises.

23 Dated this 25th day of November, 2002.

24
25 
26 Frank R. Siderius WSBA 7759
SIDERIUS LONERGAN & MARTIN LLP
Attorneys for Plaintiff

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